IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Civil Writ Petition No. 1101 of 2001 (S/B)
(Old No. 10757 of 1984)

Khima Nand Gairola
S/0 Shri Jiva Nand Gairola
Head Master Junior High School
Gangnani, District Uttarkashi … Petitioner

Versus

1. State of U. P.
2. Zila Basic Sikhsha Adhikari
   Uttarkashi … Respondents

Sri Rajendra Dobhal, learned counsel for the petitioner.
Sri N.P. Shah, learned standing counsel for the State

Hon'ble B.C. Kandpal, J.

By means of this writ petition a relief has been sought in the nature of certiorari quashing the impugned order dated 13.7.1984 passed by respondent No. 2 i.e. Zila Basic Siksha Adhikari (annexure No. 3 to the writ petition).

Brief facts giving rise to this petition are that the petitioner was appointed as an Assistant Teacher in a Primary School on 20.10.1945. The petitioner continuously worked as an Assistant Teacher upto 15.07.1958 and thereafter he was promoted to the post of Head Master, Basic School. The petitioner worked in the capacity of Head Master in different Basic School and on 17.04.1984 he was promoted to the post of Assistant Teacher, Junior High School in the pay scale of Rs. 490-860.

The petitioner further reveals that the pay scale of the Head Master of the Basic School and the Assistant Teacher of a Junior High School is the same. The petitioner was confirmed to the post of Assistant Teacher, Junior High School/ Head Master, Basic School and he worked in the said capacity in the various schools.

By way of the impugned order dated 13.07.1984, the petitioner was asked to take charge of the Assistant Teacher, Junior High School on a

lower grade of Rs. 450-720 which amounts to reversion. As the order in quest6ion was a punishment to the petitioner and amounts to reversion hence this writ petition.

Heard learned counsel for the parties and perused the record.

The writ petition was filed on 30.07.1984 before the Allahabad High Court and the court while admitting the writ petition directed that the operation of the order dated 13.07.1984 shall remain suspended till further orders.

It is pertinent to mention here that, as yet, no counter affidavit has been filed by the respondents.

It is not denied that the petitioner worked on the post of Head Master on a pay scale of Rs. 490-860 till the age of his retirement. The petitioner has arrived in paragraph 21 of the writ petition that he has to be retired from the service in June 1986 and at the time when this writ petition was posted for final hearing the petitioner has certainly retired from his post. It is to be kept in mind that the petitioner had worked on the post which carried the pay scale of Rs. 490-860.

In the instant case, the impugned order which has been annexed as annexure- 3 to the writ petition nowhere indicates, as to on what ground the petitioner was transferred to the post which carries the lower pay scale, then that of a petitioner was getting on 13.07.1984. Reverting a person to such a post which carries the lower pay scale certainly amounts to punishment and this type of reversion without affording reasonable opportunity to the petitioner would not be tenable in the eyes of law. The respondent shall have to show the grounds on which the petitioner was reverted on a post which carries the lower pay scale then that of a petitioner was getting at the time of passing impugned order. As the impugned order does not indicate about any ground on which the petitioner was reverted to the post carrying the lower pay scale, the same cannot be confirmed.

Moreover, in the instant case as I have already observed that no counter affidavit has been filed as yet, therefore, the averments made by

the petitioner in the writ petition remain uncontroverted. However, in case, if the respondents are able to show that there was no malafide on the part of the respondents in passing the impugned order dated 13.07.1984 even then, it is foremost duty of the respondents to show, as to whether any reasonable opportunity was granted to the petitioner before passing the impugned order. In the instant case, it appears to me that no opportunity whatsoever has been granted to the petitioner before passing the impugned order dated 13.07.1984.

However, if the respondents are succeeded in establishing that the impugned order is justified even then this fact cannot be denied that the petitioner has served on the post on which he was working at the time of the impugned order passed by the respondents, till the date of his superannuation under the garb of the interim order dated 30.07.1984 passed by the Division Bench of Hon'ble Allahabad High Court.

My view of fortified by the decision of Hon'ble Allahabad High Court cited in ***(1990) 1 UPLBEC 106 Lucknow Bench (DB) Baij Nath Singh Vs. State of U.P. and another*** in which the Hon'ble Court has held that "*in case if the petitioner has worked in pursuance of the interim order passed by the Court his pay shall not be realized from him or adjusted from his fund.*"

Considering the aforesaid position, I come the conclusion that this writ petition deserve to be allowed and the impugned order dated 13.07.1984 is liable to be set aside.

Accordingly, the writ petition is allowed. The impugned order dated 13.07.1984 is set aside.

The interim order dated 30.07.1984 is hereby discharged.

(B.C. Kandpal, J.)

06.07.2005
ASWAL